S.B. CIVIL WRIT PETITION NO.2186/1993

[Gurbachan Singh & Ors. Vs. State of Rajasthan & Ors.]

Date : 07.09.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. J.L. Purohit for the petitioner.

Mr. L.R. Upadhyay, Dy. Government Advocate.

BY THE COURT:-

This petition is directed against the order of the Board of Revenue dated 16.3.1993 conjointly passed in number of revisions arising under the Rajasthan Tenancy Act and relates to determination of ceiling under Chapter III-B of the said Act. By the said order, the orders passed by the competent authority determining the ceiling area of the respective holders, were set aside inter alia on the ground that the competent officer has decided the ceiling case without proper consideration and without going into the details of the facts relating to recognition of the transfers made by the respective holders and remanded the cases back

to the SDO concerned for re-deciding the question of recognition of transfers after holding proper enquiry and determine the surplus land to be acquired afresh.

The present petition relates to dispute between the transferees of the land affected by the possible acquisition of surplus land of original holders and the persons in whose favour allotments of lands declared to be surplus and acquired under such proceedings by the competent authorities. The respondents No.4 to 20 are those persons to whom land in question has been allotted and the petitioners are transferees from the original holder.

In fact, the petitioners' case is that in case the transfers made in their favour is recognised, their land will be excluded from acquisition and shall not be available to pool of surplus land available for allotment to respondents. Further even if the transfers made in their favour is not recognised for the purpose of determining the ceiling area before the surplus land is actually acquired, the land in question being

encumbered land, holder is required to surrender his unencumbered land to satisfy the claim to acquisition of surplus land before encumbered land can be surrendered, which too shall affect the available surplus land so that the bonafide transferees may not be effected.

In the circumstances, though even if the transfer of the land to the petitioner is held to be not recognisable for the purpose of determining the total holdings of the assessee under Chapter III-B of the Rajasthan Tenancy Act still such determination has derect bearing on the availability of land forming part of such pool of surplus land available for allotment to the landless persons. Therefore, the determination about the recognition of transfer becomes an integral part of the entire process of determination of the ceiling area and implementation of the ceiling laws regarding distribution of surplus land acquired under the ceiling law amongst the landless persons.

Apart from the aforesaid, from the record of

the proceedings it appears that by order dated 12.9.2002 the writ petition qua the respondents No.4 to 20, who are allottees, already stood dismissed as the petitioners have failed to effect service on them.

In view thereof, the question of validity of allotment made in favour of the respondents No.4 to 20 independent of the outcome of the ceiling proceedings cannot be effectively gone into this petition. Therefore, this petition as a whole cannot be proceeded further and the same is hereby dismissed without prejudice to the respective claims to the ultimate effect an allotments made to respondents No.4 to 20.

Learned counsel for the petitioner states that the matter on remand is still pending before the SDO and has so far not been decided. The SDO concerned is directed to decide the ceiling case of the holders in pursuance of the directions of the Board of Revenue referred to above within a period of four months.

[RAJESH BALIA], J.

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